

REPORT - PLANNING COMMISSION MEETING
May 26, 2005

Project Name and Number: BARRON RESIDENCE (PLN2004-00324)

Applicant: Ernesto Barron

Proposal: To consider a Conditional Use Permit for the construction and use of a single family residential dwelling unit on the Hill Face.

Recommended Action: Deny the application.

Location: East of Mission Boulevard between Mayhews Road and Nichols Avenue in the Niles Planning Area.

APN: 507-85-18-3

Area: 1.02 acres

Owner: Ernesto Barron

Agent of Applicant: Same

Environmental Review: This project is statutorily exempt from CEQA review per CEQA Guidelines section 15270, Projects Which Are Disapproved and Section 21080(b) (5), projects which a public agency rejects or disapproves.

Existing General Plan: Hill Face Open Space with a small portion on Mission Boulevard designated as Low Density Residential (5-7 dwelling units per acre)

Existing Zoning: O-S (H) Open Space Historic Overlay District

Existing Land Use: Vacant

Public Hearing Notice: Public hearing notification is applicable. 18 notices were mailed to owners and occupants of property within a minimum radius of 300 feet from the site on the following streets: Nichols Court, Nichols Avenue, Mission Boulevard, Mayhews Road, and Nichols Terrace. The notices to owners and occupants were mailed on May 13, 2005. A Public Hearing Notice was delivered to The Argus newspaper on May 9, 2005 to be published by May 12, 2005.

Executive Summary: The proposed project has been referred to Planning Commission at the applicant's request. The proposed design has been revised several times and staff has determined that the application is still incomplete. The applicant has requested for the application to be heard on its merits in its current state. While this report summarizes the bases for City staff's recommendation that the Planning Commission deny the current application on its merits, it should be noted that City staff has provided the applicant with comments regarding the information needed and has discussed ways by which site development could be modified for further consideration by the City.

City staff recommends that Planning Commission deny the application for the reasons summarized in this report, primarily including: the applicant has failed to identify how the project conforms to the purposes and intent of the General Plan and Hill Area Initiatives in that development is proposed on slopes of thirty percent (30%) or more; a Preliminary Grading Plan application has not been submitted and the provided grading plans were not prepared by a civil engineer; and the applicant has not provided written permission from the adjoining property owners to grade on the adjacent properties, which is required by the submitted grading plans.

Background: The project site is generally located 1,120 feet west of the intersection of Mayhews Road and Mission Boulevard in the Niles Hill Area. The site is currently vacant but at one time was owned by the Alameda County Water District. There was a water tank operated by the former Citizens Utilities Company located on the upper portion of the site that no longer exists. In 1981 the property was rezoned from Agriculture to Open Space. A Preliminary Grading Plan was approved that provided access through an adjoining property to the upper portion of the site. The Open Space zoning allows the development of a single residence on the property. A residence was never constructed and would not today conform to the current policies and ordinances for Hill Area development. The plans for that 1981 residence (Jones, Sheets A-5 and A-6) have been included in the packet of information provided by the applicant. What was previously allowed under different codes and policies is not relevant to the review of the proposed project. The applicant has also provided (Exhibit A-7) his original submitted design (June, 2004) of a residence on the upper portion of the lot that was accessed by an extensive series of stairways from the garage at Mission Boulevard. Staff provided comments on this design, particularly the difficulty for emergency response and compliance with the Hill Area Initiative of 2002 (Measure T), and the proposed residence has since been revised.

Project Description: The applicant proposes a Conditional Use Permit (CUP) for Site Plan and Architectural Approval (SPAA) to develop a 2,243 square foot (including garage) single-family residence with associated accessory structures. The structure is located on the lower "panhandle" portion of the lot. The proposed residence is two story with a two car garage. Exterior materials are primarily stucco with slate tile and batten board details. The roof is cement tile. The design is basically a simple flat pad. The applicant proposes to create a flat area on the lot through substantial re-grading of the property. The applicant proposes to cut away the slope, approximately twenty-two feet at the deepest point (as illustrated by cross section AA, sheet A-2), and remove 2,518 cubic yards of fill by the applicant's estimate.

Project Analysis:

General Plan and Zoning Conformance: The General Plan land use designation for the project site is Hill Face Open Space with a small portion on Mission Boulevard designated as Low Density Residential (5-7 dwelling units per acre). The proposed single family residential use is in conformance with the land use designation subject to approval of a Conditional Use Permit (CUP). The purpose of the CUP is to ensure that the development of the proposed project is consistent with all policies and standards adopted under the Hillside and Hill Area Initiatives, the City's Hill Area Development Policy, as well as all other applicable Hill Area regulations. A majority of the lot's area is above the staff's proposed Toe-of-the-Hill line as defined by the Hill Area Initiative of 2002 (Measure T). Any development proposed on this lot is thus subject to the policies and standards adopted for the Hill Area. As described below, based on the information submitted, staff has concluded that the project as proposed is inconsistent with Measure T, the General Plan and the Zoning Ordinance, as well as all other applicable Hill Area regulations. The proposed project is also required to comply with the requirements of the City's Grading Ordinance (Fremont Municipal Code title VIII, chapter 4), as well as the City of Fremont General Plan and Zoning Ordinance (Fremont Municipal Code title VIII, chapter 2). The proposed project does not conform to current development standards as described below in this report.

Application Process Requirements: The applicant has not submitted a formal Preliminary Grading Plan application as is required for all grading projects in excess of 1,000 cubic yards of cut and fill. A slope classification map is also required. Pursuant to Fremont Municipal Code Section 8-4104, the grading plans are required to be prepared by a registered civil engineer. The submitted drawings, Plan Sheets C1 –C2 entitled "Partial Topography Survey" and "Preliminary Grading Plan" date last plotted 10-19-2004, identify an Engineering company but only a Licensed Land Surveyor has stamped the drawings. No civil engineer is identified on the drawings. The plans as provided do not comply with Section 6735 of the Professional Engineers Act. Please note that the Professional Land Surveyors' Act does not include preparation of grading plans in the definition of land surveying. Additional information regarding grading appears to have been added to Sheet C1. The excavation quantities on Sheet C2 also appear to have been hand written. The consultant list only identifies architect Ernesto Barron, but does not list civil engineers or other consultants. Thus, the submitted drawings are not in compliance with Fremont Municipal Code Section 8-4104.

The proposed grading plan includes grading on adjacent properties that are not owned by the applicant. Fremont Municipal Code Section 8-4103 requires the applicant to obtain written permission from owners of all property on which the grading work is proposed to be performed. Thus, the applicant was required to obtain written consent from the

owners of Assessor parcels 507-85-21-1 and 507-95-12-2 related to the grading on those adjacent properties. For these reasons, the applicant is not in compliance with the requirements of FMC section 8-4103.

Additionally, it is recommended the application be denied because the project, as proposed, is incomplete or does not conform to ordinances and policies as follows:

- a. The residence should be redesigned to better fit the site topography. Buildings should be planned to minimize any grading outside the building's foundation and driveway. The building should fit the site's topography, and not grade the topography to construct a flat pad structure. (See Development Policy for the Hill Area, Section 43. "...The building should fit the site's topography, not vice versa. "Fitting the site's topography" means that the building mass and rooflines reflect the slope of the land, stepping with the grade.") A design with the garage built into the slope and living space/rooms beginning above the garage may help reduce the grading impact to the existing topography.
- b. The proposal is for a flat pad building with cuts of up to approximately 22 feet for the building pad and a slope steeper than 1 horizontal to 1 vertical (1:1) behind the home. (See Development Policy for the Hill Area, Section 60. "All exterior grading shall be accomplished using slopes no greater than 3 horizontal to 1 vertical. ..." [with limited exceptions].) The home design should be integrated into the existing topography, instead of altering the topography to accommodate a flat-pad home. A hillside home design is more appropriate for this project site.
- c. The project includes development on existing slopes greater than 30%, which is prohibited by Measure T. In this case grading is included in the definition of development. (See Measure T, Sections 8(c) and 16.)
- d. The grading proposed does not conform to the hill area policies. Where grading is required outside of the building envelope, the exterior grading shall be accomplished using slopes no greater than 3 horizontal to 1 vertical. (See b., above)
- e. A slope classification map prepared by a civil engineer or land surveyor has not been provided. The map shall conform with FMC 8-21718(a)(2), which requires the following information: Land which has a slope less than 20%; Land which has a slope of greater than 20% but not more than 30%; Land which has a slope greater than 30%.
- f. Staff is concerned about the long-term safety and constructability of the proposed grading design. A California licensed civil engineer must attest to the safety of the design and attest to its compliance with Fremont Municipal Code, Title VIII, Chapter. 4, Grading, Erosion and Sediment Control.
- g. The applicant was notified that the project site is located in a liquefaction seismic hazard zone as shown on the Seismic Hazard Zone, Niles Quadrangle map, released by the State Geologist on October 19, 2004. The City will require a site-specific seismic hazard investigation to be completed by the applicant's geotechnical engineer, reviewed and approved by the City, and then filed with the State Geologist.

Development Impact Fees: The proposed development project would be subject to Citywide Development Impact Fees. For the proposed project, these fees may include fees for fire facilities, capital facilities, park land in lieu, park facilities and traffic. These fees are calculated at the fee rates in effect at the time of building permit issuance.

Environmental Analysis: This project is statutory exempt from CEQA review per CEQA Guidelines section 15270, Projects Which Are Disapproved and Section 21080(b) (5), projects which a public agency rejects or disapproves.

Summary: Staff is bringing this application to the Planning Commission at the request of the applicant. Staff has reviewed the application on the basis of the information submitted, but further studies and revisions are required to ensure the application is complete before consideration of this project. As currently proposed, staff recommends denial of the application on its merits.

Enclosures: Exhibit "A" (Site Plan, floor plans, elevations - 14 sheets)

Informational: Background documents regarding incompleteness determination

Exhibits: Exhibit "A" (Site Plan, floor plans, elevations - 14 sheets)

Recommended Actions:

1. Hold public hearing.
2. Deny the application on its merits (based on the information and exhibits identified in this report and presented during the public hearing).

